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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/728,442	11/30/2000	Christian Lemler	50325-0505	2497

29989 7590 04/06/2005

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EXAMINER

BAYARD, DJENANE M

ART UNIT PAPER NUMBER

2141

DATE MAILED: 04/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/728,442	Applicant(s) LEMLER ET AL.	
	Examiner Djenane M Bayard	Art Unit 2141	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-8, 10-13, 15-16, 18-19, 21-27, 29-31, 33-34 is/are rejected.
- 7) ☐ Claim(s) 4,9,14,17,20,28,32 and 35 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/03/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. This is in response to amendment filed on 1/06/05 in which claims 1-35 are pending. Applicant's arguments filed 1/06/05 have been fully considered but are moot in view of the new ground(s) of rejection.
2. As per claim 1,6, 10 and 11, Applicant argues that Ellesson does not disclose, teach, or suggest, or in any way rend obvious “verifying that the information defining said particular service level agreement conforms to the set of rules in said schema. Therefore, the prior art of “schema for service level Administration of differentiated services and integrated service in Network, draft-ellesson-sla-schema-00.txt “ is introduced to teach the above limitation.
3. As per claims12, 15, 18 and 21, Applicant argues that the teaching of the prior art of Bartz is fundamentally different than the step of “distributing the one or more test to one or more agents that are configured to communicate with devices that are associated with the particular network. Therefor the prior art of U.S. Patent of Zhang et al is introduced to teach the above limitation.
4. As per claim 22, Applicant argues that Carley fails teach “receiving through a standardized open interface metric parameter information that defines one or more metric tests that are to be used to verify that the customer is receiving the level of service that has been guaranteed by the service provided”. However, Carley discloses where metrics are used as part

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of quality management to verify that they provide a method of measuring (for example sampling, testing and determining) whether a processes or product meets a given criterion. Even though, Carley's teaching is phrased differently but it is a similar teaching of the use of metric parameter in order to verify that the level of service is received.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 5-6, 11 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elleson in view of U.S. Patent No. 6,701,342 to Bartz et al.

a. As per claims 1, 6, and 11, Elleson et al teaches monitoring a service level agreement, wherein the service level agreement defines for a particular network a level of service that has been offered to a customer by a service provider, the method comprising the computer implemented steps of: creating a schema that provides a set of rules for defining service level agreements (See section 2.1, architectural Overview "the administrator- specified

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rules are stored in the policy repository or schema) and verifying that the information defining said particular service level agreement conforms to the set of rules in said schema (See section 2.1, Architectural Overview, "These rules could specify for instance the service category to be employed for a particular application....The directory client downloads the policy rules from the repository, and uses these rules to classify the packet stream and apply specific actions to thus identified packets). However, Ellesson et fails to teach receiving information defining a particular service level agreement, wherein said information defines one or more tests for monitoring the level of service that has been offered to the customer.

Bartz et al teaches receiving information defining a particular service level agreement, wherein said information defines one or more tests for monitoring the level of service that has been offered to the customer (See col. 5, lines 35-45 and col. 7, lines 45-65).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate receiving information defining a particular service level agreement, wherein said information defines one or more tests for monitoring the level of service that has been offered to the customer as taught by Bartz et al in the claimed invention of Ellesson et al in order to include measurement and condition into the SLA (See col. 5, lines 35-40).

b. As per claims 5 and 33, Ellesson et al teaches the claimed invention as described above. However, Ellesson et al fails to teach the steps of verifying that the network includes one or more devices that may be configured to perform the one or more tests.

Bartz et al teaches one or more devices that may be configured to perform the one or more tests (See col. 4, lines 45-55).

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It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate one or more devices that may be configured to perform the one or more tests as taught by Bartz et al in the claimed invention of Ellesson et al in order to collect measurement data from various resources (See col. 4, lines 30-31).

7. Claims 2,7 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellesson in view of U.S. Patent No. 6,701,342 to Bartz et al as applied to claims 1 and 6 above, and further in view of U.S. Patent No. 6,704,883 to Zhang et al.

a. As per claims 2 and 7, Ellesson et al teaches the claimed invention as described above. However, Ellesson et al fails to teach wherein if said information defining said particular service level agreement conforms to the set of rules in said schema, then distributing the one or more tests to one or more agents that are configured to communicate with devices that are associated with the network; receiving result information based on the devices performing the one or more tests; and creating and storing reporting information that indicates whether the customer is receiving the level of service that has been offered.

Zhang et al teaches an event enabled distributed testing system. Furthermore, Zhang et al teaches wherein the controller publishes a test script for event engine to broadcast to the test engine (See col. 4, lines 17-25); after agents complete their individual test, each agent sends test results back to controller for analysis (see col. 4, lines 42-46)); and creating and storing reporting information that indicates whether the customer is receiving the level of service that has been offered (See col. 4, lines 47-58).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate the teaching of Zhang in the claimed invention of Ellesson et al in order to provide simultaneous test execution by many agents at a particular network location when the agents are directed to send data to that particular location (See col. 2, lines 6-14).

a. As per claim 30, Ellesson et al in view of Naveh et al teaches the claimed invention as described above. However, Ellesson et al fails to teach wherein the computer-readable medium further comprises instruction for performing the steps of: if said information defining the service level agreement conforms to the set of rules in said schema, then distributing the one or more tests to one or more agents that are configured to communicate with devices that are associated with the particular network; receiving result information based on the devices performing the one or more tests; and creating and storing reporting information that indicates whether the customer is receiving the level of service that has been offered.

Zhang et al teaches an event enabled distributed testing system. Furthermore, Zhang et al teaches wherein the controller publishes a test script for event engine to broadcast to the test engine (See col. 4, lines 17-25); after agents complete their individual test, each agent sends test results back to controller for analysis (see col. 4, lines 42-46)); and creating and storing reporting information that indicates whether the customer is receiving the level of service that has been offered (See col. 4, lines 47-58).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the computer-readable medium further comprises instruction for performing the steps of: if said information defining the service level agreement conforms to

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the set of rules in said schema, then distributing the one or more tests to one or more agents that are configured to communicate with devices that are associated with the particular network; receiving result information based on the devices performing the one or more tests; and creating and storing reporting information that indicates whether the customer is receiving the level of service that has been offered as taught by Zhang et al in the claimed invention of Ellesson et al in order to provide simultaneous test execution by many agents at a particular network location when the agents are directed to send data to that particular location (See col. 2, lines 6-14).

8. Claims 12, 15 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,459,682 to Ellesson et al in view of U.S. Patent No. 6,704,883 to Zhang et al.

a. As per claim 12, 15 and 21, Ellesson et al teaches a method for monitoring a service level agreement, wherein the service level agreement defines for a particular network a level of service that has been offered to a customer by a service provider, the method comprising the computer implemented steps of receiving information defining the service level agreement, wherein said information defines one or more tests for monitoring the level of service that has been offered to the customer (See Section, overview “ the network administrator needs the ability to define and administer different types of services for customers” and section architectural overview “ the network administrator uses the management tool to populate the policy repository with a number of policy rules that regulate access); However, Ellesson et al fails to teach distributing the one or more tests to one or more agents that are configured to communicate with devices that are associated with the network; receiving result information based on the devices performing the

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one or more tests; and creating and storing reporting information that indicates whether the customer is receiving the level of service that has been offered.

Zhang et al teaches an event enabled distributed testing system. Furthermore, Zhang et al teaches wherein the controller publishes a test script for event engine to broadcast to the test engine (See col. 4, lines 17-25); after agents complete their individual test, each agent sends test results back to controller for analysis (see col. 4, lines 42-46)); and creating and storing reporting information that indicates whether the customer is receiving the level of service that has been offered (See col. 4, lines 47-58).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate the teaching of Zhang in the claimed invention of Elleson et al in order to provide simultaneous test execution by many agents at a particular network location when the agents are directed to send data to that particular location (See col. 2, lines 6-14).

9. Claims 3, 8, 31 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,459,682 to Elleson et al in view of U.S. Patent No. 6,701,342 to Bartz et al. and further in view of U.S. Patent Application Publication No. 202/0049815 to Dattatri et al.

a. As per claims 3,8, 31 and 34, Elleson et al in view of Bartz et al teaches the claimed invention as described above. However, Elleson et al in view of Bartz fails to teach wherein the step of creating a schema includes the step of generating a schema, wherein the schema provides

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a template for defining service level agreements (See col.2, lines 58-60). However, Ellesson et al fails to teach wherein the schema is based on Extensible Markup Language (XML).

Dattatri et al teach wherein the schema is based on Extensible Markup Language (XML) (See page 2, paragraph [0011-0012]).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the schema is based on Extensible Markup Language (XML) as taught by Ellesson et al in view of Bartz et al in order to provide tracking and monitoring (See page 1, paragraph [0008]).

10. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ellesson et al in view of U.S. Patent No. 6,466,984 to Naveh et al.

a. As per claim 10, Ellesson et al teaches monitoring a service level agreement, wherein the service level agreement defines for a particular network a level of service that has been offered to a customer by a service provider, the method comprising the computer implemented steps of: creating a schema that provides a set of rules for defining service level agreements (See section 2.1, architectural Overview “the administrator- specified rules are stored in the policy repository or schema) and verifying that the information defining said particular service level agreement conforms to the set of rules in said schema (See section 2.1, Architectural Overview, “These rules could specify for instance the service category to be employed for a particular application....The directory client downloads the policy rules form the repository, and uses these rules to classify the packet stream and apply specific actions to thus identified packets).

However, Ellesson et al fails to teach receiving information defining a particular service level agreement, wherein said information defines one or more tests for monitoring the level of service that has been offered to the customer.

Naveh et al teaches a network device configured for monitoring a service level agreement that defines for a particular network a level of service that has been offered to a customer by a service provider, comprising: a network interface (See col. 17, lines 11-15); a processor coupled to the network interface and receiving information from the network interface (See col. 17, line 51).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate a network device configured for monitoring a service level agreement that defines for a particular network a level of service that has been offered to a customer by a service provider, comprising: a network interface; a processor coupled to the network interface and receiving information from the network interface as taught by Naveh et al in the claimed invention of Ellesson et al in view of Bartz et al in order to integrate application into a policy based networking system (See col. 5, lines 14-15).

11. Claims 26 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellesson et al in view of U.S. Patent No. 6,466,984 to Naveh et al as applied to claim 10 above, and further in view of U.S. Patent No. 6,704,883 to Zhang et al.

a. As per claim 26, Ellesson et al in view of Naveh et al teaches the claimed invention as described above. However, Ellesson et al fails to teach wherein the computer-readable

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medium further comprises instruction for performing the steps of: if said information defining the service level agreement conforms to the set of rules in said schema, then distributing the one or more tests to one or more agents that are configured to communicate with devices that are associated with the particular network; receiving result information based on the devices performing the one or more tests; and creating and storing reporting information that indicates whether the customer is receiving the level of service that has been offered.

Zhang et al teaches an event enabled distributed testing system. Furthermore, Zhang et al teaches wherein the controller publishes a test script for event engine to broadcast to the test engine (See col. 4, lines 17-25); after agents complete their individual test, each agent sends test results back to controller for analysis (see col. 4, lines 42-46)); and creating and storing reporting information that indicates whether the customer is receiving the level of service that has been offered (See col. 4, lines 47-58).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the computer-readable medium further comprises instruction for performing the steps of: if said information defining the service level agreement conforms to the set of rules in said schema, then distributing the one or more tests to one or more agents that are configured to communicate with devices that are associated with the particular network; receiving result information based on the devices performing the one or more tests; and creating and storing reporting information that indicates whether the customer is receiving the level of service that has been offered as taught by Zhang et al in the claimed invention of Ellesson et al in order to provide simultaneous test execution by many agents at a particular network location when the agents are directed to send data to that particular location (See col. 2, lines 6-14).

b. As per claim 29, Ellesson et al teaches the claimed invention as described above.

However, Ellesson et al fails to teach the steps of verifying that the network includes one or more devices that may be configured to perform the one or more tests.

Zhang et al teaches one or more devices that may be configured to perform the one or more tests (See col. 4, lines 42-55).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate one or more devices that may be configured to perform the one or more tests as taught by Zhang et al in the claimed invention of Ellesson et al in order to provide simultaneous test execution by many agents at a particular network location when the agents are directed to send data to that particular location (See col. 2, lines 6-14).

12. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,459,682 to Ellesson et al in view of U.S. Patent No. 6,466,984 to Naveh et al and further in view of U.S. Patent Application Publication No. 202/0049815 to Dattatri et al.

a. As per claim 27, Ellesson et al in view of Bartz et al teaches the claimed invention as described above. However, Ellesson et al in view of Bartz fails to teach wherein the step of creating a schema includes the step of generating a schema, wherein the schema provides a template for defining service level agreements (See col.2, lines 58-60). However, Ellesson et al fails to teach wherein the schema is based on Extensible Markup Language (XML).

Dattatri et al teach wherein the schema is based on Extensible Markup Language (XML) (See page 2, paragraph [0011-0012]).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the schema is based on Extensible Markup Language (XML) as taught by Ellesson et al in view of Bartz et al in order to provide tracking and monitoring (See page 1, paragraph [0008]).

13. Claims 13 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellesson et al in view of U.S. Patent No. 6,704883 to Zhang et al as applied to claim 12 above, and further in view of U.S. Patent Application Publication No. 202/0049815 to Dattatri et al.

a. As per claims 13 and 16 , Ellesson et al in view of Bartz et al teaches the claimed invention as described above. Furthermore, Ellesson et al fails to teach wherein the step of creating a schema includes the step of generating a schema, wherein the schema provides a template for defining service level agreements (See col.2, lines 58-60). However, Ellesson et al fails to teach wherein the schema is based on Extensible Markup Language (XML).

Dattatri et al teach wherein the schema is based on Extensible Markup Language (XML) (See page 2, paragraph [0011-0012]).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the schema is based on Extensible Markup Language (XML) as taught by Ellesson et al in view of Bartz et al in order to provide tracking and monitoring (See page 1, paragraph [0008]).

14. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ellesson et al in view of U.S. Patent No. 6,704,883 to Zhang et al and further in view of U.S. Patent No. 6,466,984 to Naveh et al.

a. As per claim 18, Ellesson et al teaches a computer-readable medium accessible by the processor and comprising one or more sequences of instructions which, when executed by the processor, cause the processor to carry out the steps of: receiving, information defining the service level agreement, wherein said information defines one or more tests for monitoring the level of service that has been offered to the customer (See architectural Overview); However, Ellesson et al fails to teach distributing the one or more tests to one or more agents that are configured to communicate with devices that are associated with the network; receiving result information based on the devices performing the one or more tests; and creating and storing reporting information that indicates whether the customer is receiving the level of service that has been offered and a network device configured for monitoring a service level agreement that defines for a particular network a level of service that has been offered to a customer by a service provider, comprising: a network interface; a processor coupled to the network interface and receiving information from the network interface;

Zhang et al teaches an event enabled distributed testing system. Furthermore, Zhang et al teaches wherein the controller publishes a test script for event engine to broadcast to the test engine (See col. 4, lines 17-25); after agents complete their individual test, each agent sends test results back to controller for analysis (see col. 4, lines 42-46)); and creating and storing reporting

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information that indicates whether the customer is receiving the level of service that has been offered (See col. 4, lines 47-58).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the computer-readable medium further comprises instruction for performing the steps of: if said information defining the service level agreement conforms to the set of rules in said schema, then distributing the one or more tests to one or more agents that are configured to communicate with devices that are associated with the particular network; receiving result information based on the devices performing the one or more tests; and creating and storing reporting information that indicates whether the customer is receiving the level of service that has been offered as taught by Zhang et al in the claimed invention of Ellesson et al in order to provide simultaneous test execution by many agents at a particular network location when the agents are directed to send data to that particular location (See col. 2, lines 6-14).

Naveh et al teaches a network device configured for monitoring a service level agreement that defines for a particular network a level of service that has been offered to a customer by a service provider, comprising: a network interface (See col. 17, lines 11-15); a processor coupled to the network interface and receiving information from the network interface (See col. 17, line 51).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate a network device configured for monitoring a service level agreement that defines for a particular network a level of service that has been offered to a customer by a service provider, comprising: a network interface; a processor coupled to the network interface and receiving information from the network interface as taught by Naveh et al in the claimed

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invention of Ellesson et al in view of Bartz et al in order to integrate application into a policy based networking system (See col. 5, lines 14-15).

14. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ellesson et al in view of U.S. Patent No. 6,704,883 to Zhang et al, further in view of U.S. Patent No. 6,466,984 to Naveh et al as applied to claim 18 above, and further in view of U.S. Patent Application Publication No. 2002/0049815 to Dattatri.

a. As per claim 19, Ellesson et al in view of Bartz et al and further in view of Naveh et al teaches the claimed invention as described above. Furthermore, Ellesson et al fails to teach wherein the step of creating a schema includes the step of generating a schema, wherein the schema provides a template for defining service level agreements (See section architectural overview). However, Ellesson et al fails to teach wherein the schema is based on Extensible Markup Language (XML).

Dattatri et al teach wherein the schema is based on Extensible Markup Language (XML) (See page 2, paragraph [0011-0012]).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the schema is based on Extensible Markup Language (XML) as taught by Ellesson et al in view of Bartz et al and further in view of Naveh et al in order to provide tracking and monitoring (See page 1, paragraph [0008]).

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15. Claims 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,701,342 to Bartz et al in view of U.S. Patent No. 6,701,345 to Carley et al.

a. As per claim 22, Bartz et al teaches a method for monitoring a level of service that is being provided to a customer by a service provider, the method comprising the computer-implemented steps of: storing information that defines the level of service that has been guaranteed to a customer by a service provider (See col. 13, lines 45-51). However, Bartz et al fails to teach receiving through a standardized open interface metric parameter information that defines one or more metric tests that are to be used to verify that the customer is receiving the level of service that has been guaranteed by the service provider; and verifying that based on the metric parameter information, the one or more metric tests will provide an appropriate set of tests for measuring the level of service that is being provided to the customer by the service provider.

Carley et al teaches receiving through a standardized open interface metric parameter information that defines one or more metric tests that are to be used to verify that the customer is receiving the level of service (See col. 64, lines 8-11); and verifying that based on the metric parameter information, the one or more metric tests will provide an appropriate set of tests for measuring the level of service that is being provided to the customer (See col. 102, lines 5-7).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate teach receiving through a standardized open interface metric parameter information that defines one or more metric tests that are to be used to verify that the customer is receiving the level of service; and verifying that based on the metric parameter information, the one or more metric tests will provide an appropriate set of tests for measuring the level of service

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that is being provided to the customer as taught by Carley et al in the claimed invention of Bartz et al in order to ensure integrity, quality and consistency (See col. 18, lines 15-17).

b. As per claim 23, Ellesson et al in view of Bartz et al and further in view of Carley et al teaches the claimed invention as described above. However, Ellesson et al in view of Bartz et al and further in view of Carley et al fails to teach wherein the step of verifying the one or more metric tests includes the step of verifying that the one or more metric tests conform to a standard of testing that has been approved by the service provider.

Carley et al teaches wherein the step of verifying the one or more metric tests includes the step of verifying that the one or more metric tests conform to a standard of testing that has been approved by the service provider (See col. 37, lines 7-15).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the step of verifying the one or more metric tests includes the step of verifying that the one or more metric tests conform to a standard of testing that has been approved by the service provider as taught by Carley et al in the claimed invention of Ellesson et al in order to ensure integrity, quality and consistency (See col. 18, lines 15-17).

16. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ellesson et al in view of U.S. Patent No. 6,269401 to Fletcher et al.

a. As per claim 24, Ellesson et al teaches a method for monitoring a service level agreement, wherein the service level agreement defines for a particular network a level of service

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that has been offered to a customer by a service provider, the method comprising the computer implemented steps of: receiving a service level agreement definition that defines one or more tests for monitoring the level of service that is being provided to the customer (See Architectural Overview); However, Ellesson et al fails to teach receiving a service level contract definition that defines apply times for performing the one or more tests ; and verifying that the service level agreement definition and the service level contract definition conform with the level of service that has been offered to the customer by the service provider.

Fletcher et al teaches receiving a service level contract definition that defines apply times for performing the one or more tests (See col. 24, lines 59-60); and verifying that the service level agreement definition and the service level contract definition conform with the level of service that has been offered to the customer by the service provider (col. 25, lines 27-38).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate receiving a service level contract definition that defines apply times for performing the one or more tests; and verifying that the service level agreement definition and the service level contract definition conform with the level of service that has been offered to the customer by the service provider as taught by Main et al in order to monitor performance and compare actual performance against a Service Level Agreement to which each monitored jobs belongs (See col. 3, lines 30-33).

b. As per claim 25, Ellesson et al teaches verifying that the particular network includes one or more devices that may be configured to perform the one or more tests (See col. 6, lines 28-39).

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Allowable Subject Matter

17. Claims 4, 9, 14, 17, 20, 28, 32 and 35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Djenane M Bayard whose telephone number is (571) 272-3878. The examiner can normally be reached on Monday- Friday 5:30 AM- 3:00 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (571) 272-3880. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Djenane Bayard

Patent Examiner

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A handwritten signature in black ink, consisting of stylized, cursive letters that appear to read 'Rupal Dharia'.

RUPAL DHARIA
SUPERVISORY PATENT EXAMINER